

In The  
**Supreme Court of the United States**  
October Term, 1990

NOV 29 1990  
JOSEPH F. SPANION, JR.  
CLERK

BAXTER CHRYSLER PLYMOUTH, INC.,

and

JOHN MARKEL, INC., d/b/a  
MARKEL FORD, et al.

and

JOHN KRAFT CHEVROLET, INC.,  
d/b/a JOHN KRAFT CHEVROLET-ISUZU, INC.

and

STAN OLSEN PONTIAC, INC., d/b/a OLSEN AUTO  
WORLD and OLSEN FAMILY DISCOUNT CENTER,

*Petitioners,*

vs.

THE STATE OF IOWA, ex-rel.  
THOMAS J. MILLER, Attorney General of Iowa,  
*Respondent.*

Petition For Writ Of Certiorari To The  
Iowa Supreme Court

REPLY TO BRIEF IN OPPOSITION

MARK A. WEBER,  
Attorney of Record  
JAMES D. SHERRETS  
LISA M. FAISANT  
SHERRETS, SMITH & GARDNER  
Regency Professional Plaza  
260 Regency Parkway Drive  
Omaha, Nebraska 68114  
(402) 390-0404

*Attorneys for Petitioners*

## PARTIES TO THE PROCEEDING

The named appellant in the Supreme Court for the State of Iowa, and the only respondent here is Thomas J. Miller, Attorney General for the State of Iowa.

The named appellees in the Supreme Court for the State of Iowa, and the only petitioners here, are Baxter Chrysler Plymouth, Inc., John Markel Ford, Inc. d/b/a Markel Ford, John Kraft Chevrolet, Inc., d/b/a John Kraft Chevrolet-Isuzu, Inc., and Stan Olsen Pontiac, Inc., d/b/a Olsen Auto World. Dean Rawson Nissan, Inc. was dismissed following the decision of the Iowa Supreme Court and therefore is not taking part in this Petition for Writ of Certiorari. The Supreme Court of Iowa affirmed the decision of the Iowa District Court dismissing the individual defendants for lack of personal jurisdiction, but reversed the decision as to the corporate defendants. A list of all parent and subsidiary companies is contained in the Petition for Writ of Certiorari at page ii.



## ARGUMENT

### I. THE IOWA CONTACTS OF THE DEALERS ARE INSUFFICIENT TO SUBJECT THEM TO THE PERSONAL JURISDICTION OF IOWA COURTS

It is necessary for Petitioners to clarify the extent of their contacts with the forum State of Iowa. The quantity of contacts between the Dealers and the forum state of Iowa is insignificant at best and is not the result of any attempt by the Petitioners to serve the Iowa market. The Petitioners do no business in Iowa, do not maintain offices in Iowa, and do not send agents into Iowa. The only contacts relevant to these actions are the incidental contacts through advertisements in a Nebraska newspaper which, against the request of Petitioners, gets delivered into Iowa by the newspaper itself and not by the Petitioners. The Iowa Attorney General asserts that by advertising in the Nebraska newspaper, the *Omaha World Herald*, the Petitioners have sought to serve the Iowa market. Respondent also argues that the advertisements in the telephone book of Council Bluffs, Iowa should be considered contacts for purposes of the "minimum contacts analysis". However, these advertisements in the telephone book are unrelated to the claims asserted against Petitioners, nor were these advertisements alleged in Respondent's petitions. Therefore, only the Petitioners' contacts through the *Omaha World Herald* should be considered in determining whether there are sufficient contacts with the State of Iowa to warrant the assertion of personal jurisdiction.

At the time material to the allegations of the Iowa Attorney General, the paid circulation of the *Omaha World Herald* was 301,916 on Sunday and 224,269 for the daily,

of which 5700 Sunday and 3700 daily are subscriptions in Council Bluffs, Iowa, for a percentage of 1.79%. App. D to the Petition, p. 35a. The total circulation of the Sunday newspaper to Iowan's (32,700) constitutes only 1.2% of the total Iowa population.<sup>1</sup> App. A to the Petition, p. 5a.

In view of these statistics, it is clear that the Petitioners' contacts with Iowa are insignificant. By advertising in a Nebraska newspaper, these Nebraska car dealers have not sought to invoke the benefits and protections of Iowa law. Nor have they "purposefully availed" themselves of the privilege of doing business in Iowa. There simply are no allegations that the Petitioners do any business in Iowa. Consequently, the assertion of personal jurisdiction over Petitioners by the Supreme Court of Iowa is violative of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and is contrary to "traditional notions of fair play and substantial justice." *International Shoe Company v. Washington*, 326 U.S. 310, 316 (1945).

## II. THE CASES CITED IN THE BRIEF IN OPPOSITION ARE FACTUALLY DISTINGUISHABLE FROM THE PRESENT ACTIONS

Respondent relies on cases which involve a greater degree of contacts by the nonresident defendants with the forum state than Petitioners have with the State of Iowa. For example, Respondent cites *Ex parte Pope Chevrolet, Inc.* (*Re Emmie Wallace v. Pope Chevrolet, Inc., et al.*), 555 So.2d

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<sup>1</sup> Based upon a total Iowa population of 2,834,000 as indicated by the Iowa Bureau of Vital Statistics.

109 (Ala. 1989) as being a case which is "nearly identical" to the present actions. In fact, that case is very different from these claims being pursued by the Iowa Attorney General against these Nebraska car dealers based upon advertisements in Nebraska medium. In *Pope*, there was a real plaintiff pursuing a claim based upon an actual sale of an automobile. In the present case, there are no allegations of any automobile sales by any of the car dealers to residents of Iowa. There simply is no plaintiff who is alleging he or she has been injured as a result of Petitioners' advertisements in the *Omaha World Herald*.

Other cases cited by Respondent involve the assertion of jurisdiction over the nonresident publishers or writers of libelous publications or articles such as *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984) and *Calder v. Jones*, 465 U.S. 783 (1984). The present case is clearly distinguishable. In the first place, the *Omaha World Herald* does not enjoy a national circulation. It is a local publication which has approximately 98% of its circulation in Nebraska. It must also be emphasized that Petitioners are Nebraska retailers advertising in a Nebraska newspaper. They are not the publishers of the *Omaha World Herald* and they therefore do not control the circulation of the paper as did the defendants in *Keeton v. Hustler Magazine, Inc.*

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## CONCLUSION

The decision of the Iowa Supreme Court is in conflict with the decisions of this Court, federal appellate and district courts, and state appellate courts. The assertion of personal jurisdiction by the Iowa courts over these Nebraska car dealers based upon advertisements placed in a Nebraska newspaper is violative of the constitutional guarantee of the due process clause.

The only contacts Petitioners have with the forum State of Iowa are their advertisements placed in a Nebraska newspaper over which they have no control. As a result of the conduct of the newspaper, and not that of Petitioners, a small number of these newspapers have incidental circulation into Iowa. Such tenuous contacts are not sufficient to afford a basis for the assertion of personal jurisdiction over Petitioners within the limits imposed by the Constitution and the guidelines promulgated by this Court.

The issue of personal jurisdiction must be decided on a case by case basis by examining the nature, quality and quantity of the nonresident defendants contacts with the forum state as well as the interest of the forum state in maintenance of the suit. When these factors are considered in this matter, it appears that the Supreme Court of Iowa has found the assertion of personal jurisdiction over Petitioners is proper. However, in a number of other cases, this Court and others have found such an assertion would be violative to the due process clause where there was a greater degree of contact with the forum state. For

these reasons, Petitioners respectfully request that this Court issue a Writ of Certiorari.

Respectfully submitted,

MARK A. WEBER,

Attorney of Record

JAMES D. SHERRETS

LISA M. FAISANT

SHERRETS, SMITH & GARDNER

260 Regency Parkway Drive

Omaha, Nebraska 68114

(402) 390-0404

*Attorneys for Petitioners*

**APPENDIX F**

**60-1411.03. Unauthorized acts.** It shall be unlawful for any licensee to engage, directly or indirectly, in the following acts:

- ↪ (1) To advertise and offer any year, make, engine size, model, type, equipment, price, trade-in allowance, terms, or make other claims or conditions pertaining to the sale, leasing, or rental of motor vehicles, motorcycles, and trailers which are not truthful and clearly set forth;
- (2) To advertise for sale, lease, or rental a specific motor vehicle, motorcycle, or trailer which is not in possession of the dealer, owner, or advertiser and willingly shown and sold, as advertised, illustrated, or described, at the advertised price and terms, at the advertised address. Unless otherwise specified, a motor vehicle, motorcycle, or trailer advertised for sale shall be in operable condition and on request, the advertiser thereof shall show records to substantiate an advertised offer;
- (3) To advertise a new motor vehicle, motorcycle, or trailer at a price which does not include standard equipment with which it is fitted or is ordinarily fitted, without disclosing such fact, or eliminating any such equipment for the purpose of advertising a low price;
- (4) To advertise (a) that the advertiser's prices are always or generally lower than competitive prices and not met or equalled by others or that the advertiser always or generally undersells competitors; (b) that the advertiser's prices are always or generally the lowest or

that no other dealer has lower prices; (c) that the advertiser is never undersold; or (d) that no other advertiser or dealer will have a lower price;

(5) To advertise and make statements such as, Write Your Own Deal, Name Your Own Price, Name Your Own Monthly Payments, and other statements of a similar nature;

(6) To advertise by making disparaging comparisons with competitors' services, quality, price, products, or business methods;

(7) To advertise by making the layout, headlines, illustrations, and type size of an advertisement so as to convey or permit an erroneous impression as to which motor vehicle, motorcycle, or trailer or motor vehicles, motorcycles, or trailers are offered at featured prices. No advertised offer, expression, or display of price, terms, down payment, trade-in allowance, cash difference, or savings shall be misleading by itself, and any qualification to such offer, expression, or display shall be clearly and conspicuously set forth in comparative type size and style, location, and layout to prevent deception;

(8) To advertise the price of a motor vehicle, motorcycle, or trailer without including all charges which the customer must pay for the motor vehicle, motorcycle, or trailer, excepting state and local tax and license and title fees. It shall be unlawful to advertise prices described as unpaid balance, unless they are the full cash selling price and to advertise price which is not the full selling price even though qualified with expressions such as with trade, with acceptable trade, or other similar words;

- (9) To advertise as at cost, below cost, below invoice, or wholesale, unless the term used shall be strictly construed that the word cost, as used above or in a similar meaning, shall be the actual price paid by the advertiser to the manufacturer for the motor vehicle, motorcycle, or trailer so advertised;
- (10) To advertise claims that Everybody Financed, No Credit Rejected, We Finance Anyone, and other similar affirmative statements;
- (11) To advertise a specific trade amount, or range of amounts;
- (12) To advertise the words Finance, Loan, Discounts, or others of similar import, in the firm name or trade style of a person offering motor vehicles, motorcycles, and trailers for sale, unless such person is actually engaged in the finance business and offering only bona fide repossessed motor vehicles, motorcycles, and trailers. It is unlawful to use the word Repossessed in the name or trade style of a firm in the advertising of motor vehicles, motorcycles, and trailers sold by such a company unless they are bona fide repossessions sold for unpaid balances due only. Advertisers offering repossessed automobiles for sale must be able to offer proof of repossession.
- (13) To advertise the term Authorized Dealer in any way as to mislead as to the make or makes of motor vehicles, motorcycles, or trailers for which a dealer is franchised to sell at retail;
- (14) To advertise or sell new motor vehicles, motorcycles, and trailers by any person not franchised by the

manufacturer of the motor vehicle, motorcycle, or trailer offered without disclosing of the fact that the licensee is not enfranchised by the manufacturer for service under factory warranty provisions;

(15) To advertise used motor vehicles, motorcycles, or trailers so as to create the impression that they are new. Used motor vehicles, motorcycles, and trailers of the current and preceding model year must be clearly identified as Used, Executive Driven, Demonstrator, or Driver Training, and lease cars, taxicabs, fleet vehicles, police motor vehicles, or motorcycles as may be the case and descriptions such as Low Mileage, Slightly Driven may also be applied only when correct. The terms demonstrator's, executive's, and official's motor vehicles, motorcycles, or trailers shall not be used unless they have never been sold to a member of the public and unless such terms describe motor vehicles, motorcycles, or trailers used by new motor vehicle, motorcycle, or trailer dealers or their employees for demonstrating performance ability and unless such vehicles are advertised for sale as such only by an authorized dealer in the same make of motor vehicle, motorcycle, or trailer. Phrases such as Last of the Remaining, Closeout, Final Clearance, and others of similar import shall not be used in advertising used motor vehicles, motorcycles, and trailers so as to convey the impression that the motor vehicles, motorcycles, and trailers offered are holdover new motor vehicles, motorcycles, and trailers. When new and used motor vehicles, motorcycles, and trailers of the current and preceding model year are offered in the same advertisement, such offers shall be clearly separated by description, layout, and art treatment;

- (16) To advertise executives' or officials' motor vehicles, motorcycles, or trailers unless they have been used exclusively by the personnel or executive of the motor vehicle, motorcycle, or trailer manufacturer or by an executive of any authorized dealer of the same make thereof and such motor vehicles, motorcycles, and trailers have not been sold to a member of the public prior to the appearance of the advertisements;
- (17) To advertise motor vehicles, motorcycles, and trailers, owned by or in the possession of dealers, without the name of the dealership or in any other manner so as to convey the impression that they are being offered by private parties;
- (18) To advertise the term wholesale in connection with the retail offering of used motor vehicles, motorcycles, and trailers;
- (19) To advertise terms auction or auction special and other terms of similar import unless such terms shall be used in connection with motor vehicles, motorcycles, and trailers offered or sold at a bona fide auction to the highest bidder and under such other specific conditions as may be required in this act;
- (20) To advertise free driving trial, unless it means a trial without obligation of any kind and that the motor vehicle, motorcycle, or trailer may be returned in the period specified, without obligation or cost. A driving trial advertised on a money back basis or with privilege of exchange or applying money paid on another motor vehicle, motorcycle, or trailer shall be so explained. Terms and conditions of driving trials, free or otherwise, shall be set forth in writing for the customer;

(21) To advertise (a) the term Manufacturer's Warranty, unless it is used in advertising only in reference to cars covered by a bona fide factory warranty for that particular make of motor vehicle, motorcycle, or trailer. In the event only a portion of such warranty is remaining, then reference to a warranty may be used only if stated that that unused portion of the warranty is still in effect; (b) the term New Car Guarantee, except in connection with new motor vehicles, motorcycles, and trailers; and (c) the terms Ninety-day Warranty, Fifty-fifty Guarantee, Three hundred mile Guarantee, and Six-month Warranty, unless the major terms and exclusions are sufficiently described in the advertisement;

(22) To advertise representations inconsistent with or contrary to the fact that a motor vehicle, motorcycle, or trailer is sold as is and without a guarantee. The customer contract shall clearly indicate when a car will be sold with a guarantee and what that guarantee is, and similarly shall clearly indicate when a car is sold as is and without a guarantee; and

(23) To advertise or to make any statement, declaration, or representation in any advertisement that cannot be substantiated in fact, and the burden of proof of the factual basis for such statement, declaration, or representation is on the licensed dealer and not on the board.

**Source:** Laws 1971, LB 768, § 13; Laws 1972, LB 1335, § 10; Laws 1974, LB 754, § 11; Laws 1980, LB 820, § 3; Laws 1984, LB 825, § 18.

Effective date April 10, 1984.

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**APPENDIX G**

**IN THE IOWA DISTRICT COURT**

**FOR POTTAWATTAMIE COUNTY**

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THE STATE OF IOWA ex rel.	)	
THOMAS J. MILLER,	)	
ATTORNEY GENERAL OF IOWA,	)	
Plaintiff,	)	EQUITY NO.
	)	58534
v.	)	
BAXTER CHRYSLER PLYMOUTH,	)	
INC. and TALTON K.	)	PETITION
ANDERSON, in his corporate	)	(Filed Sept. 4,
capacity as President of	)	1987)
Baxter Chrysler Plymouth, Inc.	)	
Defendants.	)	

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COMES NOW the Plaintiff, the State of Iowa, by Thomas J. Miller, Attorney General of the State of Iowa, and Linda Thomas Lowe, Assistant Attorney General, and for its cause of action states:

I.

1. The Plaintiff, the State of Iowa ex rel. Thomas J. Miller, Attorney General of Iowa, is empowered pursuant to the *Iowa Consumer Fraud Act*, Iowa Code § 714.16, H.F. 416, 72 G.A., 1st Sess. (Iowa 1987) (hereinafter referred to as Iowa Code § 714.16 (1987) as amended) and the *Iowa Consumer Credit Code*, Iowa Code §§ 537.6104(2), 537.6110,

537.6112, and 537.6113 (1987) to initiate this action seeking injunctive relief, a civil penalty, restitution and recovery of costs for the use of the State, including court costs.

2. The Attorney General is the Administrator of the Iowa Consumer Credit Code, Iowa Code § 537.6103 (1987), and in this capacity may enforce the federal Truth-In-Lending Act, 15 U.S.C. 1601, et seq. (hereinafter referred to as the federal Truth-In-Lending Act) to the fullest extent of the law. Iowa Code § 537.6104(2) (1987).

3. Thomas J. Miller is the duly elected, qualified, and acting Attorney General of the State of Iowa.

4. William E. Mooney, Jr. is the registered agent for service of process on the Defendants with a business address of 1800 First National Center, Omaha, Nebraska 68102.

5. Defendant Baxter Chrysler Plymouth, Inc. is a Nebraska corporation whose principal place of business is 11910 West Dodge road, Omaha, Nebraska 68154.

6. The term Defendants shall refer to both Defendant Talton K. Anderson and Defendant Baxter Chrysler Plymouth, Inc. unless otherwise specifically designated.

## II.

7. The Iowa District Court has jurisdiction of this action pursuant to Iowa Code §§ 537.1201(1)(c), 537.1203, 537.6104(2) (1987) and § 714.16(7) as amended.

8. Defendants have offered for sale or lease to Iowans motor vehicles through advertisements in the Iowa edition of the Omaha World Herald which is a

newspaper sold, distributed, and delivered in Iowa to Iowans and on WOWT television which is an Omaha/Council Bluffs television station viewed by Iowans.

9. On information and belief, Iowans have purchased motor vehicles for their use in Iowa from the Defendants based on these advertisements.

10. Defendants' advertisements are governed by the Iowa Consumer Credit Code, Iowa Code § 537.3209 (1987); the federal Truth-In-Lending Act, 15 U.S.C. §§ 1662, 1664 and 1667c (1987), Regulation Z - 12 C.F.R. § 226.24 (1987) and Regulation M - 12 C.F.R. § 213.5 (1987); and the Iowa Consumer Fraud Act, Iowa Code § 714.16(2)(a) (1987) as amended.

11. Iowa Code § 537.3209 (1987), the Iowa Consumer Credit Code provides as follows:

A seller, lessor, or lender shall not advertise, display, publish, distribute, utter, or broadcast, or cause to be advertised, printed, displayed, published, distributed, uttered, or broadcast in any manner, any false, misleading, or deceptive statement or representation with regard to the rates, terms or conditions of credit with respect to a consumer credit transaction.

12. Incorporated in the Iowa Consumer Credit Code, the federal Truth-In-Lending Act, and regulations promulgated thereunder, specifically 12 C.F.R. § 226.24(a)-(c) and § 226.24 Comment 1 (1987) provide:

(a) If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged by the creditor.

(b) If an advertisement states a rate of finance charge, it shall state the rate as an "annual percentage rate," using that term. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. The advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

(c) If an advertisement states the amount or percentage of any downpayment, the number of payments or period or repayment, the amount of any payment, or the amount of any finance charge, the advertisement must also state the following terms:

- i. The amount or percentage of the downpayment.
- ii. The terms of repayment.
- iii. The "annual percentage rate," using that term, and, if the rate may be increased after consummation, that fact.

and 12 C.F.R. § 213.5(a) and (c) (1987) provide:

(a) No advertisement to aid, promote or assist directly or indirectly any consumer lease may state that a specific lease of any property at specific amounts or terms is available unless the lessor usually and customarily leases or will lease such property at those amounts or terms.

\* \* \*

(c) If an advertisement for a consumer lease states the amount of any payment, the number of required payments, or that any or no downpayment is required at consummation of the lease, the advertisement must also clearly and conspicuously state:

- i. That the transaction advertised is a lease.
- ii. The total amount of any payment such as a security deposit required at the consummation of the lease or that no such payment is required.
- iii. A payment schedule.
- iv. A statement of whether the customer has the option to purchase the leased property.
- v. A statement about the amount of any liability the lease imposes upon the customer at the end of the term.

In addition, all advertisements governed by 12 C.F.R. § 226.24(a)-(c) are subject to a "clear and conspicuous" standard as provided in Comment 1, 12 C.F.R. § 226.24(a)-(c).

13. Iowa Code Section 714.16(2)(a) (1987) as amended provides as follows:

pretense, false promise, or misrepresentation, or the concealment, suppression, or omission of a material fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise, whether or not a person has in fact been misled, deceived, or damaged, is an unlawful practice.

### III.

14. Defendants were advised by the Plaintiff by certified letter on or about November 26, 1986, that certain of their advertisements violated 12 C.F.R. §§ 226.24 and 213.5 (1986) and the Iowa Consumer Fraud Act, Iowa Code § 714.16(2)(a) (1986). A letter signed by Defendant

Anderson was returned on or about December 18, 1986, to the Attorney General acknowledging that Defendants had been advised of the violations and the Defendants' duty to comply with the advertising statutes. A copy of the plaintiff's November letter and the Defendant's acknowledgement are attached to this Petition as Exhibits A and B.

#### IV.

15. Defendants' advertisements, in the Iowa Edition of the Omaha World Herald and on Channel WOWT (Omaha) television have violated Iowa Code Section 714.16(2)(a) (1987) as amended, by using unfair practices, deception, or misrepresentation or by having concealed, suppressed, or omitted material facts with intent that others rely upon such concealment, suppression, or omission in connection with the advertisement for sale of motor vehicles including, but not limited to, the following specifics:

(a) On February 8, and February 10, 1987, the Defendants violated Iowa Code § 714.16(2)(a) in their advertisements in the Omaha World Herald, by using the term "list" to imply that the Defendants' current selling price represents a "sale" from the "list" price because Defendant customarily sold these cars at "list." (See Exhibits 1 and 2.)

(b) Defendants' advertisements in the Omaha World Herald on January 25, 26, and 29, 1987, June 20, 1987, and July 22, 1987, and their Channel WOWT (Omaha) television advertisements on or about August 12, 1987, violated Iowa Code § 714.16(2)(a) by not giving a reasonable basis

for the advertised "discount." (See Exhibits 3, 4, and 5.)

§ 714.16(2)(a) by offering a "free" blue fox fur coat with the purchase of a new car, thereby baiting the consumer to purchase a car from the Defendants failing to disclose that the cost of the fur coat was included in the sale price of the car as opposed to being "free." (See: Exhibits 3 and 6.)

(d) On May 30, June 7, June 11, and June 18, 1987, Defendants violated Iowa Code § 714.16(2)(a) in their advertisements in the Iowa edition of their Omaha World Herald by advertising certain used vehicles as "specials" or as "sale" items when in fact, although the name of the "special" or "sale" event changed (from one advertisement to the next (from "used specials" to "Brass Hat Sale," to "Foreign Car Sale," to "Hail Sale,") the price of specific advertised cars did not necessarily change from "sale" to "sale." (See: Exhibits 7, 8, 9 and 10.)

16. Defendants have violated Iowa Code Section 537.3209, 12 C.F.R. § 226.24, and 12 § [sic] C.F.R. 213.5 by making misleading representations in their advertisements for sale or lease of motor vehicles or by omitting mandatory credit terms including, but not limited to, the following specifics:

(a) On January 22, 25, 26, 28, and 29, 1987; February 8, and 10, 1987; March 29, 1987; May 16, May 17, May 26, and May 31, 1987; June 20, 1987; and July 12 and July 22, 1987, Defendants, advertised motor vehicles for sale in the Omaha World Herald and stated a rate of finance charge but did not state it as an "annual percentage rate" in violation of 12 C.F.R. 226.24(b). (See Exhibits 11, 3, 6, 1, 2, 12, 13, 14, 4, 15, and 5)

(b) On February 8 and 10, 1987, Defendants advertised a "balloon payment" transaction by conspicuously advertising 47 payments of \$181.00 per month and by disclosing in fine print only that the 48th payment equaled \$2021.00. In the same advertisements Defendants advertised a low rate of finance (3.7%) which was not available on the \$181.00 mo. transaction. This advertisement was not clear and conspicuous and was misleading. (*See Exhibits 1 and 2*)

(c) On June 24 and June 29, 1987, Defendants advertised a 1986 Chrysler by stating the A.P.R. and the number of monthly payments, but Defendants did not state the complete terms of repayment because they omitted the downpayment and the amount of monthly payments. Both of these advertisements were in violation of 12 C.F.R. § 226.24(c)(2)(ii). (*See: Exhibit 16.*)

(d) On January 22, 1987, in their Omaha World Herald advertisement, Defendants advertised a lease for "no money down." The same advertisement also stated that the first payment and a small security deposit were due on delivery. The advertisement violates 12 C.F.R. § 213.5(c)(2) because the Defendants did not clearly and conspicuously disclose: 1) that a payment was required at the consummation of the lease, 2) the total of lease payments, or 3) that the transaction was a lease. (*See Exhibit 11.*)

(e) On January 22, 25 and 28, 1987, Defendants advertised in the Omaha World Herald in violation of 12 C.F.R. § 213.5(c)(5), the amount of the monthly lease payment but in violation of 12 C.F.R. § 213.5(c)(5) did not clearly and conspicuously indicate that the transaction was a lease and omitted the total of lease payments. (*See Exhibit 6.*)

(f) On or about August 12, 1987, Defendants Channel WOWT television advertisements displayed mandatory credit terms that were not clear and conspicuous because the size of the print and the speed of the advertisement rendered the disclosures meaningless.

17. The practices set forth in paragraph 16 above are deceptive and misleading, and therefore also violate the Iowa Consumer Fraud Act, Iowa Code § 714.16(2)(a) (1987) as amended.

#### V. PRAYER FOR RELIEF

18. It is in the public interest that temporary and permanent injunctive relief be promptly issued to protect the public of the State of Iowa from any further losses from Defendants' illegal conduct.

19. This petition for injunctive relief has not been presented to, or denied, by any other judge of the district court.

20. The State of Iowa is exempt from furnishing bond by the provisions of Iowa R. Civ. P. 9.

WHEREFORE, the Plaintiff prays for relief against the Defendants as follows:

21. After notice and opportunity for hearing, the Court should issue a temporary injunction restraining Defendants from:

(a) advertising, offering for sale or lease, attempting to sell or lease or selling or leasing any goods in violation of 12 C.F.R. § 226.24 and 12 C.F.R. § 213.5 as incorporated in Iowa Code chapter 537, and

(b) advertising motor vehicles through the use of any unfair practice, deception, or misrepresentations and specifically enjoining Defendants from engaging in practices in violation of the laws of the State of Iowa, and federal law as incorporated as set forth in this Petition.

22. The Court should permanently enjoin Defendants from:

(a) advertising, offering for sale or lease, attempting to sell or lease or selling or leasing any goods in violation of 12 C.F.R. § 226.24 and 12 C.F.R. § 213.5 (1987) as incorporated in Iowa Code chapter 537, and

(b) advertising motor vehicles through the use of any practices in violation of the laws of the State of Iowa, and federal law as incorporated, as set forth in this Petition.

23. Order Defendants to pay restitution to Iowans of any money that was acquired by means of any practices referred to above in violation of the Iowa Consumer Fraud Act, Iowa Code § 714.16, as amended.

24. Order Defendants to pay a civil penalty pursuant to Iowa Code § 537.6113(2) (1987) and § 714.16(7) as amended.

25. Order Defendants to pay the state its costs pursuant to Iowa Code §§ 714.16(10), as amended, and 537.6106(1) (1987).

26. Order Defendants to pay all court costs.

27. Grant such further relief as the Court may deem just and equitable.

Respectfully submitted,

THOMAS J. MILLER  
Attorney General of Iowa

RICHARD L. CLELAND  
Assistant Attorney General

By: /s/ Linda Thomas Lowe  
LINDA THOMAS LOWE  
Assistant Attorney General  
ATTORNEYS FOR THE  
PLAINTIFF  
Consumer Protection Division  
1300 East Walnut, Hoover  
Bldg.  
Des Moines, IA 50319  
Phone: (515) 281-5926

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Omaha World Herald 2-8-87 pg. 27d

# We're Over Stocked

We've got to move them out by the end of the month!



UP TO  
**\$1,000 37%**  
CASH BACK  
DIRECT FROM CHRYSLER  
FINANCING



List.....\$17,0420  
Sale.....\$14,972

Cash Back....\$1,000 DIRECT FROM CHRYSLER

Cash \$13,972  
Price

7-YEAR  
70,000 MILE WARRANTY



Bucket Seats, Automatic, Power Steering, Power Brakes, Air Conditioning, Cruise Control, Tilt Steering Wheel and Light Package.

List.....\$11,732

Sale.....\$11,059

Cash Back.....\$500 DIRECT FROM CHRYSLER

**\$10,559**  
Price



List.....\$10,017  
Sale.....\$9,480

NO DOWN PAYMENT OR INTEREST RATE

**\$1,610**  
DOWN PER MO.

Chrysler's 400 = Finance applied to Purchase of 1/201 with Qualified Credit.

6% APR. 48m Payment of \$1,610

**PAXIER**

1980 One Year Dodge • ACR 1/600

Plymouth



Omaha World Herald  
2-10-87; pg. 20

**We're overStocked**

Wave got to move them out by the end of the month!

Model No. ED05

**37% FINANCING**

**Reliant 4-door**  
The best traditional family car

List.....	\$10,017
Sale.....	\$9,480

**NO PAYMENT IS DUE AFTER TAX DAY**

**NO MONEY DOWN** \$181.00 PER MO.

**7 YEARS 70,000 MILES WARRANTY**

Chrysler's 400 Rebate applied to purchase 37 payments of \$181.00 at 6.8% A.P.R. with payment of \$2,021.00 with qualified credit.

**BAXTER**

1-1910 West Dodge • 493-7800 JAGUAR

Exhibit 2

Omaha World Herald  
1-25-87; pg. 3c  
1-26-87; pg. 24  
1-29-87; pg. 30

The Warmest, Most Beautiful  
Deal in Town!

**FREE!**  
**BLUE FOX FUR COAT**

When you  
purchase a  
New Car from  
Baxter's...Now  
thru Jan. 31st.

**3.9%**  
Chrysler-  
Omni  
On Selected  
Models

Save Up to \$2,000

**BAXTER**  
120th & W. DODGE 498-7800

Omaha World-Herald  
 June 20, 1987  
 Pg. 37

# THE **BEST** JUST GOT BETTER

HERE'S 3 GOOD REASONS WHY!

- ★ Chrysler Financing As Low As.... 3.7%
- ★ Chrysler Cash Rebates To..... \$750
- ★ Baxter Discounts To..... \$2500



IF THAT'S NOT  
 ENOUGH...

COLTS ARE  
 BAXTER PRICED AT JUST

\$ 5995

• Nothing Down • Approved Credit  
 • 60-Month 9.9% Financing..... Just \$127 Month

30-Years of the Best at...

**BAXTER**

11910 West Dodge • 493-7800



Exhibit 4

Omaha World Herald  
1-25-87; pg. 28d  
1-28-87; pg. 27

The warmest, most beautiful deal in Town!  
**FREE**  
BLUE FOX  
FUR COAT  
PLUS 3.9%  
FINANCING  
When you purchase a new  
auto from us, now thru Jan 31.

Chrysler Fifth Avenue  
Fully Equipped  
**\$2000**  
Save...

**Plymouth**

**Horizon America**

It's one of America's best Small Car Values... Huge Selection to Choose from.

Stock Number 0887

**Lowest \$122.00 PER.  
M.O.**

With Qualifying Credit, 11122 down payment, 48 months, interest and taxes, no options, 11125 nontransferable industry insurance. Options to purchase some vehicles, 11125 nontransferable. Tax and license fees not included.

**Sundance** Stock Number 4313  
5-Speed Transmission, FrontWheel Drive, AM Radio, Ready to Drive Off our Showroom Floor.

**\$7999.00**

**Chrysler** offers:  
**\* 3.99%**

**on Selected  
Models**

**TRUCKS**

**DODGE** 498 - 800

**2011**

Exhibit 6



Omaha World-Herald  
May 30, 1987  
pg. 37

# BAXTER'S USED CAR SPECIALS

<b>'86 CHEVY CAVALIER</b>	<b>'86 CHEVY CAVALIER</b>
Convertible, automatic, factory air, bright red in color. Cavalier RS convertible has it all plus low miles. The perfect graduation gift.	4 door, automatic, transmission, factory air, special factory program vehicle with remaining 3 year warranty. Was \$5995, now
<b>SAVE</b>	<b>\$5999</b>
<b>'85 CAMARO Z-28</b>	<b>'86 TOYOTA MR-2</b>
Multipoint, V8 engine, automatic, RR wheel, cruise control, bright red Z-28 has it all. Was \$11,250, now	Toyota's most exciting 2 seater sports car. 5 speed transmission, factory air, sun roof, black, Recaro seats. A lot on anybody's scale. Was \$12,295, now
<b>\$10,695</b>	<b>\$11,240</b>
<b>'85 DODGE 600</b>	<b>'85 PONTIAC FIREBIRD</b>
2 door with automatic transmission, factory air conditioning, power steering and bucket seats with console. Local new car trade in. Was \$8995.	8 cyl., automatic, factory air, bucket seats/console. Only 40,000 miles. Bright red in color. Was \$8295.
<b>\$5890</b>	<b>\$7550</b>
<b>'85 CHRYSLER LEBARON</b>	<b>'79 BUICK REGAL</b>
Convertible. Lee Iacocca brought the convertible back. New LeBaron convertible will be \$70,000. This one is only	Local one owner car. V-6, automatic transmission, factory air, only 50,000 miles. Mint condition
<b>\$8995</b>	<b>SAVE</b>
<b>'86 BUICK SOMERSET</b>	<b>'85 BUICK CENTURY</b>
Equipped with 4 cylinder, automatic transmission, factory air conditioning and power windows. Low mileage, balance of factory warranty.	2 door with automatic transmission and factory air conditioning. Low few miles. Was \$7995.
<b>\$8995</b>	<b>\$6995</b>
<b>'87 PLYMOUTH</b>	<b>'85 MAZDA RX-7</b>
VOYACERS. Woodgrain trim, highback seats, 7 passenger mini van. 3 to choose from, full protection plan available.	Local one owner car with 5-speed and air conditioning. Only 20,000 miles and the brightest red you've ever seen
<b>\$13,995</b>	<b>\$12,450</b>
<b>'86 CHRYSLER</b>	<b>'84 OLDS TORONADO</b>
NEW YORKER. Turbo, gun metal blue vinyl pwr. leather seats. Factory program car. 7.5% APR financing for 48 months with approved credit. Was \$14,995, now	V-8, automatic transmission, factory air, windows with power, more. Was \$10,995.
<b>\$13,980</b>	<b>\$9999</b>

**BAXTER**  
120th & W. Dodge Rd. 493-7800

Omaha Sunday World-Herald  
 June 7, 1987  
 Pg. 28-D

**BAXTER'S**

# **BRASS HATS SALE**

**'86 CHEVY CAVALIER**  
 Convertible, automatic, factory air, bright red in color. Cavalier RS convertible has it all plus low miles. The perfect graduation gift.

**SAVE**

**'86 PONTIAC FIERO**  
 5 speed trans., factory air conditioning. Only 5,000 miles on this new car cream puff. ONLY ...

**\$7995**

**'84 AUDI 5000 TURBO**  
 The list of options on this car could fit this page, so we'll just say it's double loaded. Should be \$13,995. Our Price ...

**\$10,999**

**'85 CHRYSLER LEBARON**  
 CONVERTIBLE. Lee Iacocca brought the convertible back. New LeBaron convertibles will be \$20,000. This one's only

**\$8995**

**'86 BUICK SOMERSET**  
 Equipped with 4 cylinder automatic transmission, factory air conditioning and power windows. Low mileage, balance of factory warranty.

**\$8995**

**'87 PLYMOUTH VYKERS**  
 Woodgrain sides, highback seats, 7 passenger mini van. 5 to choose from, full protection plan available.

**\$13,995**

**'86 BUICK RIVIERA**  
 Full power, 8 cyl., automatic, factory air conditioning. Special chamois & leather interior. Balance of factory warranty on this 10,000 mile cream puff. NOW ONLY ...

**\$13,999**

**'85 CHRYSLER NEW YORKER**  
 Only 13,000 miles on this local one-owner car. V-8, automatic. Full power. Don't miss this one. Was \$14,500. Now ...

**\$12,950**

**'86 TOYOTA MR-2**  
 Toyota's most exciting 2 seater sports car. 5 speed transmission, factory air, sun roof, Mack, Recaro seats. A fan on anybody's scale. Was \$12,295, now ...

**\$11,240**

**'85 SAAB 900**  
 Local new car trade with only 30,000 miles. Automatic, air conditioning. Was \$12,395. Now ...

**\$11,850**

**'86 CHRYSLER LASER**  
 Only 12,000 miles on this local new car trade. 4 cyl., automatic, air conditioning. Was \$9,995. Now ...

**\$8440**

**'87 PLYMOUTH SUNDANCE**  
 This loaded up Factory Reg car has turbo, automatic, full power, air conditioning, and balance of full factory warranty. SAVE thousands over new.

**SAVE**

**'85 MAZDA RX-7**  
 Local one owner car with 5-speed and air conditioning. Only 20,000 miles and the brightest red you've ever seen.

**\$12,450**

**'84 TOYOTA CAMRY**  
 4 DR LE. Full power, sunroof. A 3.3 on anybody's scale.

**SAVE**

**BAXTER**

120th & W. Dodge Rd. 493-7800

Omaha World-Herald  
 June 11, 1987  
 Pg. 28

<b>FOREIGN CAR SALE</b>	
<b>'86 TOYOTA MR 2</b>	<b>'84 AUDI 5000 TURBO</b>
Toyota's most exciting 2 seater sports car. 5 speed transmission, factory air, sunroof, black Ricaro seats. A ton on anybody's scale. Was \$12,295.	The list of options on this car could fill a page, so let's just say it's double loaded. Should be \$13,995.
<b>NOW \$10,980</b>	<b>NOW \$10,999</b>
<b>'85 MAZDA RX7</b>	<b>'85 SAAB 900</b>
Local one owner car with 3 options, and air conditioning. Only 20,000 miles and the brightest red you've ever seen.	Local new car trade with only 28,000 miles. Automatic, air conditioning. Was \$12,995.
<b>REDUCED \$12,450</b>	<b>NOW \$11,850</b>
<b>'85 MAZDA 626</b>	<b>'84 TOYOTA CAMRY</b>
4 door equipped with 5 speed and air conditioning. Only 32,000 miles. Was \$8995.	4 door LE. Equipped with full power and sun roof. A S.S. on anybody's scale. Was \$9595.
<b>NOW ONLY \$7650</b>	<b>NOW \$3860</b>

**BAXTER**  
 120th & W. Dodge Rd. 493-7800

Omaha World-Herald  
June 16, 1987  
Pg. 31

same ad - June 18, 1987  
pg. 44

**MINOR HAIL SALE**

Due to light hail Friday, June 12th, most of our cars sustained minor hail damage. ALL CARS DISCOUNTED FOR QUICK SALE!

<b>'86 TOYOTA MR 2</b> Toyota's most exciting 2 seater sports car. 5 speed transmission, factory air, sunroof, stereo, Recaro seats. A 9.9 on anybody's scale. Was \$12,295.	<b>'84 AUDI 5000 TURBO</b> The list of options on this car could fill a page, so let's just say it's choice hardware. Should be \$13,995.
<b>NOW \$10,980</b>	<b>NOW \$10,999</b>
<b>'85 MAZDA RX7</b> Local one owner car with 5 speed, and air conditioning. Only 20,000 miles and the original red vinyl over seats.	<b>'83 SUBARUS</b> 1 Coupe, 1 Wagon, 3 doors, ac, conditioning. Extremely nice inside and out. Was \$4995.
<b>REDUCED \$12,288</b>	<b>NOW \$3988</b>
<b>'85 MAZDA 626</b> 4 door equipped with 5 speed and air conditioning. Only 23,000 miles. Was \$8995.	<b>'84 TOYOTA CAMRY</b> 4 door LE. Equipped with tilt power and sunroof. A 9.9 on anybody's scale. Was \$8995.
<b>NOW ONLY \$7650</b>	<b>NOW \$8860</b>

**BAXER'S**  
11910 West Dodge • 493-7800 • J 1001A

**1987 New Car Expo**

**FROM A STORIED TRADITION OF OPEN MOTORCARS COMES ONE OF THE MOST EXCITING V-12 JAGUARS EVER BUILT:**

**JAGUAR XJ-S CONVERTIBLE**

**BY HESS & EISENHARDT.**

A sports coupe in the grand tradition, the Jaguar XJ-S Convertible conveys an incomparable sense of smooth yet potent V-12 in its sensuously sumptuous interior and bold silhouette, the S-type is a stirring example of mechanical artistry. The 1987 Jaguar XJ-S Convertible comes with the Security of a three year/36,000 mile limited warranty and is available by special order. Featuring the luxury and performance of the XJ-S Coupe, this beautiful soft top conversion is executed by Hess & Eisenhardt. Visit our display at the Metro New Car Expo for more information.

**LeBADON**

**NOW AVAILABLE!**

The first impression made by the newest LeBaron is one of quietness. The second is elegance-elegance born of the delicate balance between functional aerodynamics and seductive sculpting. Of LeBaron's dramatically low, swept-back front end. Of its aircraft-style doors and flush-mounted glass. Of its acutely angled pillars, concealed headlights and wraparound taillights. An elegance envied with flair. LeBaron is not merely a car to be driven. It is a car to be experienced.

**Fifth Avenue**

**COLT HORIZON RELIANT**

Four door sedan with a mile long history of reliability. Front wheel drive and nearly impossible to beat on gas mileage.

Four door sedan. Chrysler's K Car that took the corporation from bankruptcy to the highest pinnacle of success. Hard to beat quality and economy. Stock #7713.

**ONLY \$127.68 mo.**

**ONLY \$122.39 mo.**

**SALE PRICE \$9378<sup>00</sup>**

**SPECIAL • SPECIAL • SPECIAL  
16 '86'S REMAIN  
SAVINGS UP TO \$3000<sup>00</sup>**

**CHRYSLER PLYMOUTH**

**BAXTER**  
120th and DODGE 493-7800

**OVER 400 CARS TO CHOOSE FROM**

Omaha World Herald  
3-29-87; pg. 31d

**MARCH ED OUT SALES**

OPEN TODAY

NOON TO 4!

**LAST CHANCE AS LOW AS 3.7% FINANCING**

**CHRYSLER REBATES UP TO \$1500**

**POSSIBLY ENDS MARCH 31!**

**7/70 PROTECTION PLAN**

**1987 COLT \$104.00 MO.**

#0692. \$1000 down cash or trade equivalent, 60 months, 10.9% APR financing with approved credit.

**REMAINING 86's SOLD AT SACRIFICE PRICES!**

**1986 LASER XT TURBO**

<small>Lst.</small>	<small>\$13,570</small>
<small>DISCOUNT</small>	<small>\$11,000</small>
<small>Baxter Rebate</small>	<small>\$1,000</small>
<small>Chrysler Rebate</small>	<small>\$3,500</small>

**YOUR PRICE — \$13,070 or 249.00**

**NEAR OCCASION**

**DODGE**

**495-7800**

**BAXTER**

Omaha World-Herald

May 16, 1987

pg. 39

same ad - 5-31-87

The advertisement features a central cartoon illustration of a man in a top hat and bow tie driving a classic sedan. The man has a mustache and is looking towards the right. The background is filled with various car models, each with a price tag. On the left, there's a large sign that reads "THE BEST JUST GOT BETTER". Another sign below it says "The BEST REBATES... The BEST DEALS Ever! UP TO \$750.00 CASH BACK UP TO 3.7% FINANCING". To the right, there's a large "BAXXER" logo with "30-Years of the Best" written above it. The overall layout is busy and designed to showcase multiple vehicle options and their prices.

### Exhibit 13

Omaha Sunday World-Herald  
May 17, 1987  
pg. 32-D

**BEST BUY EVER**

**JUST BECAUSE GOT UP TO \$7500 CASH BACK**

The BEST DEALS EVER!  
The BEST REBATES. The BEST DEALS EVER!  
The BEST UP TO \$7500 CASH BACK

**3.7% Financing**

**Lebowitz**

This Year's **Indy 500 Pace Car**  
Beauty with a Passion for Driving!

Power Steering, Power Brakes, Power Windows, Power Door Locks, Speed Control, Rear Window Defroster. This one is Loaded.

**\$11,950.00**

**Young Choice 3.7% FINANCING PLUS CASH BACK**

Stock No. 9960

**New York**

**Luxurious Sedan**  
Power and Comfort

Sale Price **\$17,581.00**  
Bartel's Discount **\$1881.00**  
Chrysler's Rebate **\$750.00**

**\$14,950**

Power Steering, Power Brakes, Tilt Steering Column, AM/FM Stereo Radio, 2.2 Turbo Engine, Speed Control, Power Door Locks, Power Seats, Power Windows, Electric Rear Window Defroster, Wire Wheel Covers.

Stock No. 7053

**Imported for Plymouth**  
built by Mitsubishi in Japan!

Sale Price **\$16,140.00**  
Chrysler Rebate **\$130.00**  
You Save **\$15,840.00**  
You Pay Only **\$12,721\* PER MONTH**

**NO MONEY DOWN**

WITH QUALIFIED CREDIT  
60 MONTHS, 10.9% A.P.R., DEFERRED PRICE 7/31/80  
Stock No. 3615

**30-Years of the Best at...**

**BMW** **MITSUBISHI** **FORD** **JAGUAR**

**BAWLEY'S**

At our NEW location, 11910 West Dodge • 493-7800

Omaha World-Herald  
May 26, 1987  
Pg. 20

**THE  
BEST  
BETTER  
JUST GOT BETTER**

The BEST DEALS ever!  
The BEST REBATES... The BEST CASH BACK  
The BEST FINANCING  
UP TO 3.7% Financing

**New Yorker**

Luxurious Sedan  
Power and Comfort

Sale Price	\$17,581.00
Bartier's Discount	\$1,881.00
Chrysler's Rebate	\$750.00
<b>\$14,950</b>	

Stock No. 7057

Power Steering, Power Brakes, Tilt Steering Column, AM/FM Stereo Radio, 2.2 Turbo Engine, Speed Control, Power Door Locks, Power Seats, Power Windows, Electric Rear Window Defroster, Wire Wheel Covers.

**Imported for Plymouth**

Built by Mitsubishi in Japan

Sale Price	\$6,140.00
Crysler Rebate	\$3,000.00
You Pay Only	\$15,840.00
<b>\$127.00*</b>	PER MONTH

WITH QUALIFIED CREDIT \*30 MONTHS, 10% APR. DEPOSIT PRICE \$793.00

**NO MONEY DOWN**

Stock No. 3915

Coll

30 Years of the Best at...

**DAYTONA**

JAGUAR  
FERRARI  
LAMBORGHINI  
MITSUBISHI  
NISSAN  
TOYOTA  
BMW  
MERCEDES-BENZ  
PORSCHE  
ALFA ROMEO  
MASERATI  
LANCIA  
FERRARI  
LAMBORGHINI  
MITSUBISHI  
NISSAN  
TOYOTA  
BMW  
MERCEDES-BENZ  
PORSCHE  
ALFA ROMEO  
MASERATI  
LANCIA



Omaha World-Herald  
July 12, 1987  
Pg. 27-D

Reduced Copy

# Baxter's Greatest Year End Sale!

**Everything Goes!  
Discounts Up to \$2,500<sup>00</sup>**

**Over 400 New and Used Cars to choose from!**

**Plymouth Horizon**  
Ready to Drive Off the Showroom Floor!  
YEAR END PRICE \$5,995  
\*60-MONTHS, 11% APR. TOTAL PAYMENTS \$7080\* WITH QUALIFIED CREDIT.

**1987 GLS 4-Door Sedan**  
Automatic Transmission, Power Steering and Brakes, AM/FM Stereo Cassette, Rear Window Wiper and Washer and Defroster  
STOCK NO. 2059  
Sale Priced.....\$12,030  
You Save.....-\$1,250<sup>00</sup>  
YEAR END PRICE \$10,200<sup>00</sup>

**Chrysler Offers 3.7%**  
On Selected Models.

**LIBERTY COUPE**  
Stock No. 2162  
Sale Priced.....\$13,229<sup>00</sup>  
You Save.....-\$2,002<sup>00</sup>  
YEAR END PRICE \$11,227<sup>00</sup>

**Used Car Specials!**

'85 CHEVY.....\$6650 CAMARO Z-28. Red in color, auto, factory air, power windows, red cloth bucket seats. Was \$10,995 NOW ONLY	'84 CUTLASS.....\$6650 CIERA BROUGHAN. Only 33,000 miles. Full power, 4 cyl. auto, factory air. Was \$7995, NOW ONLY
'84 TOYOTA.....\$6750 TERCEL. 4 door, 4 cyl. auto, factory air. Only 31,000 miles on this beauty!	'85 BUICK.....\$8000 CENTURY. Compare our low price with anyone else! 2 door, auto, factory air, 1-owner local car, low low miles. Was \$7995, NOW ONLY
'84 CHRYSLER.....\$7500 5TH AVE. V-8, auto, air cond., full power. Local one owner car. Was \$9995, NOW	'86 BUICK.....\$13,500 RIVIERA. 8 cyl. auto, power steering, brakes, windows, door locks. All the fancy electronic glitzes. Only 10,000 miles on this Factory Luxury Car. Check around, compare our price.
'84 CHRYSLER.....\$8300 NEW YORKER. 5 cyl. auto, factory air, AM/FM cruise, AM/FM cassette, front wheel drive.	'84 CHEVY.....\$8000 CAMARO. All white, blue interior, 2 door sport coupe, auto, factory air. Priced to sell.

**BAXTER**

**120<sup>TH</sup> and DODGE**  
**493-7800**



Omaha World-Herald

June 24, 1987

Pg. 5

Enlarged

same ad - June 29, 1987

Pg. 20

CHRYSLER '86 New Yorker Turbo.  
Gun metal blue with full power.  
Leather seats, factory program car.  
7.9% APR for 48 months with available credit. NOW ONLY \$14,550. Save  
Thousands. BAXTER, 120th & West  
Dodge Road, 473-7800.

**APPENDIX H**

**IN THE IOWA DISTRICT COURT**

**FOR POTTAWATTAMIE COUNTY**

---

THE STATE OF IOWA ex rel.	)	
THOMAS J. MILLER,	)	
ATTORNEY GENERAL OF IOWA,	)	
Plaintiff,	)	
v.	)	
JOHN KRAFT CHEVROLET, INC.,	)	EQUITY NO.
d/b/a JOHN KRAFT CHEVROLET-	)	58536
ISUZU, INC.,	)	
and	)	PETITION
JOHN E. KRAFT, in his	)	(Filed Sept. 4,
corporate capacity as	)	1987)
President of John Kraft	)	
Chevrolet, Inc.,	)	
Defendants.	)	

---

COMES NOW the Plaintiff, the State of Iowa, by Thomas J. Miller, Attorney General of the State of Iowa, and William L. Brauch, Assistant Attorney General, and for its cause of action states:

**I.**

1. The Plaintiff, the State of Iowa ex rel. Thomas J. Miller, Attorney General of Iowa, is empowered pursuant to the *Iowa Consumer Fraud Act*, Iowa Code § 714.16, H.F. 416, 72 G.A., 1st Sess. (Iowa 1987) (hereinafter referred to as Iowa Code § 714.16 (1987) as amended) and the *Iowa*

*Consumer Credit Code, Iowa Code §§ 537.6104(2), 537.6110, 537.6112, and 537.6113 (1987) to initiate this action seeking injunctive relief, a civil penalty, restitution and recovery of costs for the use of the State, including court costs.*

2. The Attorney General is the Administrator of the Iowa Consumer Credit Code, Iowa Code § 537.6103 (1987), and in this capacity may enforce the federal Truth-In-Lending Act, 15 U.S.C. § 1601, et seq. (hereinafter referred to as the federal Truth-In-Lending Act) to the fullest extent of the law. Iowa Code § 537.6104(2) (1987).

3. Thomas J. Miller is the duly elected, qualified, and acting Attorney General of the State of Iowa.

4. Defendant John E. Kraft is the President of John Kraft Chevrolet, Inc., and is the registered agent for service of process on the Defendants with a business address of 6120 Military Avenue, Omaha, Nebraska 68134.

5. Defendant John Kraft Chevrolet, Inc. is a Delaware corporation whose principal place of business is 8505 Crown Point Avenue, Omaha, Nebraska 68134.

6. The term Defendants shall refer to both Defendant John Kraft Chevrolet, Inc. and Defendant John E. Kraft unless otherwise specifically designated.

## II.

7. The Iowa District Court has jurisdiction of this action pursuant to Iowa Code §§ 537.1201(1)(c), 537.1203, 537.6104(2) (1987), and § 714.16(7) as amended.

8. Defendants have offered motor vehicles for sale to Iowans through advertisements in the Iowa edition of

the Omaha World Herald which is a newspaper sold, distributed, and delivered to Iowans in Iowa.

9. On information and belief, Iowans have purchased or leased motor vehicles for their use in Iowa from the Defendants based on these advertisements.

10. Defendants' advertisements are governed by the Iowa Consumer Credit Code, Iowa Code §§ 537.3209, 537.6104(2) (1987); the federal Truth-In-Lending Act, 15 U.S.C. §§ 1662 and 1664 (1987), and its implementing regulations 12 C.F.R. § 226.24 (1987); and the Iowa Consumer Fraud Act, Iowa Code § 714.16(2)(a) (1987) as amended.

11. Iowa Code § 537.3209 (1987), the Iowa Consumer Credit Code provides as follows:

A seller, lessor, or lender shall not advertise, display, publish, distribute, utter, or broadcast, or cause to be advertised, printed, displayed, published, distributed, uttered, or broadcast in any manner, any false, misleading, or deceptive statement or representation with regard to the rates, terms or conditions of credit with respect to a consumer credit transaction.

12. Incorporated in the Iowa Consumer Credit Code, the federal Truth-In-Lending Act, and regulations promulgated thereunder, specifically 12 C.F.R. § 226.24(a)-(c), and Comment 1, § 226.24 (1987) provides, in general, that all advertisements of credit terms are subject to a "clear and conspicuous" standard. In particular, § 226.24(a)-(c) provides:

(a) If an advertisement for credit states specific credit terms, it shall state only those terms that

actually are or will be arranged or offered by the creditor.

(b) If an advertisement states a rate of finance charge, it shall state the rate as an "annual percentage rate," using that term. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. the advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

(c) If an advertisement states the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, the advertisement must also state the following terms:

- i. The amount or percentage of the downpayment.
- ii. The terms of repayment.
- iii. The "annual percentage rate," using that term, and, if the rate may be increased after consummation, that fact.

13. Iowa Code Section 714.16(2)(a) (1987) as amended provides as follows:

The act, use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression, or omission of a material fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise, whether or not a person has in fact been misled, deceived, or damaged, is an unlawful practice.

## III.

14. Defendants were advised by the Plaintiff by certified letter on or about November 26, 1986, that certain of their advertisements violated the federal Truth-In-Lending Act consumer [sic] Consumer Credit Code. Defendant John E. Kraft acknowledged receipt of this letter with a reply letter dated December 10, 1986, however, Defendant Kraft did not sign and return to Plaintiff a proposed agreement that defendant acknowledge the violations and promise to correct future advertisements. A copy of the November letter and Defendant's reply are attached to this Petition as Exhibits A and B.

## IV.

15. Defendants in their Omaha World Herald advertisements have violated Iowa Code Section 714.16(2)(a) (1987) as amended, by using deception, unfair practices, or misrepresentation or having concealed, suppressed, or omitted material facts with intent that others rely upon such concealment, suppression, or omission in connection with the advertisement for sale of motor vehicles including, but not limited to, the following specifics:

(a) March 21, 22 and 29, 1987 and April 9, 1987, the Defendants violated Iowa Code § 714.16(2)(a) by using in their advertisements in the Omaha World Herald, the terms "This Week Only," for a "Below Invoice" sale beginning in March 21, 1987 and then extending that sale in advertisements on March 29, 1987 and April 9, 1987. (See Exhibits 1, 2, 3, and 4).

(b) On April 29, 1987, May 31, 1987, and June 4, 7, 10, 13, 14, and 18, 1987, Defendants violated Iowa Code § 714.16(2)(a) by using in their

advertisements in the Omaha World Herald, the terms "This Week," for a sale of a, "New! 1986 Isuzu I-Mark." The use of this terminology represented that this was a one-week-only sale. (See Exhibits 5-11).

(c) On May 31, 1987 and June 3, 7, and 11, 1987, the Defendants violated Iowa Code § 714.16(2)(a) by using in their advertisements in the Omaha World Herald, the terms, "This Week," for a sale of a, "New! 1986 Isuzu Spacecab Pickup." the use of this terminology represented that this was a one-week-only sale. (See Exhibits 12 and 13).

(d) On June 21, 1987 and July 5, 7, 12, 13, 21, 25 and 26, 1987 and August 2, 1987, the Defendants violated Iowa Code § 714.16(2)(a) by using in their advertisements in the Omaha World Herald, terms "This Week," for a sale of a "New! 1987 Isuzu Pickup." The use of this terminology represented that this was a one-week-only sale. (See Exhibits 14A, 14, 15, 16, 17 and 17A).

(e) On February 8, 1987, March 15 and 30, 1987, April 1, 4 and 11, 1987, and May 3, 9, 10, 14, 17, 18, 21,

Respectfully submitted,  
**THOMAS J. MILLER**  
Attorney General of Iowa  
**RICHARD L. CLELAND**  
Assistant Attorney General

By: /s/ **William L. Brauch**  
**WILLIAM L. BRAUCH**  
Assistant Attorney General  
**ATTORNEYS FOR THE**  
**PLAINTIFF**  
Consumer Protection Division  
1300 East Walnut,  
Hoover Bldg.  
Des Moines, IA 50319  
Phone: (515) 281-5926

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**APPENDIX I**  
**IN THE IOWA DISTRICT COURT**  
**FOR POTTAWATTAMIE COUNTY**

---

THE STATE OF IOWA ex rel.	)	
THOMAS J. MILLER,	)	
ATTORNEY GENERAL OF IOWA,	)	
Plaintiff,	)	
v.	)	
JOHN MARKEL, INC.,	)	EQUITY NO.
d/b/a MARKEL FORD,	)	58535
and	)	PETITION
TIMOTHY S. MARKEL, in his	)	(Filed Sept. 4,
corporate capacity as	)	1987)
President of John Markel,	)	
Inc.,	)	
Defendants.	)	

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COMES NOW the Plaintiff, the State of Iowa, by Thomas J. Miller, Attorney General of the State of Iowa, and William L. Brauch, Assistant Attorney General, and for its cause of action states:

**I.**

1. The Plaintiff, the State of Iowa ex rel. Thomas J. Miller, Attorney General of Iowa, is empowered pursuant to the *Iowa Consumer Fraud Act*, Iowa Code § 714.16, H.F. 416, 72 G.A., 1st Sess. (Iowa 1987) (hereinafter referred to as Iowa Code § 714.16 (1987) as amended) and the *Iowa Consumer Credit Code*, Iowa Code §§ 537.6104(2), 537.6110,

537.6112, and 537. 6113 (1987) to initiate this action seeking injunctive relief, a civil penalty, restitution and recovery of costs for the use of the State, including court costs.

2. The Attorney General is the Administrator of the Iowa Consumer Credit Code, Iowa Code § 537.6103 (1987), and in this capacity may enforce the federal Truth-In-Lending Act, 15 U.S.C. § 1601, et seq. (hereinafter referred to as the federal Truth-In-Lending Act) to the fullest extent of the law. Iowa Code § 537.6104(2) (1987).

3. Thomas J. Miller is the duly elected, qualified, and acting Attorney General of the State of Iowa.

4. John H. Markel, Jr. is the registered agent for service of process on the Defendants with a business address of 716 North 102nd Street, Omaha, Nebraska 68114. Defendant Timothy S. Markel is the president of John Markel, Inc.

5. Defendant John Markel, Inc. is an Omaha, Nebraska corporation whose principal place of business is 716 North 102nd Street, Omaha, Nebraska 68114.

6. The term Defendants shall refer to both Defendant John Markel, Inc. and Defendant Timothy S. Markel unless otherwise specifically designated.

## II.

7. The Iowa District Court has jurisdiction of this action pursuant to Iowa Code §§ 537.1201(1)(c), 537.1203, 537.6104(2) (1987), and § 714.16(7) as amended.

8. Defendants have offered motor vehicles for sale or lease to Iowans through advertisements in the Iowa

edition of the Omaha World Herald which is a newspaper sold, distributed, and delivered to Iowans in Iowa.

9. On information and belief, Iowans have purchased or leased motor vehicles for their use in Iowa from the Defendants based on these advertisements.

10. Defendants' advertisements are governed by the Iowa Consumer Credit Code, Iowa Code §§ 537.3209, 537.6104(2) (1987); the federal Truth-In-Lending Act, 15 U.S.C. §§ 1662, 1664 and 1667c (1987), and its implementing regulations 12 C.F.R. § 226.24 (1987), 12 C.F.R. § 213.5 (1987); and the Iowa Consumer Fraud Act, Iowa Code § 714.16(2)(a) (1987) as amended.

11. Iowa Code § 537.3209 (1987), the Iowa Consumer Credit Code provides as follows:

A seller, lessor, or lender shall not advertise, display, publish, distribute, utter, or broadcast, or cause to be advertised, printed, displayed, published, distributed, uttered, or broadcast in any manner, any false, misleading, or deceptive statement or representation with regard to the rates, terms or conditions of credit with respect to a consumer credit transaction.

12. Incorporated in the Iowa Consumer Credit Code, the federal Truth-In-Lending Act, and regulations promulgated thereunder, specifically 12 C.F.R. § 226.24(a)-(c), and Comment 1, § 226.24 (1987) provides, in general, that all advertisements of credit terms are subject to a "clear and conspicuous" standard. In particular § 226.24(a)-(c) provides:

(a) If an advertisement for credit states specific credit terms, it shall state only those terms that

actually are or will be arranged or offered by the creditor.

(b) If an advertisement states a rate of finance charge, it shall state the rate as an "annual percentage rate," using that term. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. The advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

(c) If an advertisement states the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, the advertisement must also state the following terms:

- i. The amount or percentage of the downpayment.
- ii. The terms of repayment.
- iii. The "annual percentage rate," using that term, and, if the rate may be increased after consummation, that fact.

and 12 C.F.R. § 213.5(a) and (c) (1987) provide:

(a) No advertisement to aid, promote or assist directly or indirectly any consumer lease may state that a specific lease of any property at specific amounts or terms is available unless the lessor usually and customarily leases or will lease such property at those amounts or terms.

\* \* \*

(c) If an advertisement for a consumer lease states the amount of any payment, the number of required payments, or that any or no downpayment is required at consummation of the

lease, the advertisement must also clearly and conspicuously state:

- i. that the transaction advertised is a lease.
- ii. The total amount of any payment such as a security deposit required at the consummation of the lease or that no such payment is required.
- iii. A payment schedule, including the number and amounts of scheduled payments as well as the total of payments.
- iv. A statement of whether the customer has the option to purchase the leased property, and at what price and time.
- v. A statement about the amount of any liability the lease imposes upon the customer at the end of the term.

13. Iowa Code Section 714.16(2)(a) (1987) as amended provides as follows:

The act, use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression, or omission of a material fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise, whether or not a person has in fact been misled, deceived, or damaged, is an unlawful practice.

### III.

14. Defendants were advised by the Plaintiff by certified letter on or about November 26, 1986, that certain of their advertisements violated both the federal Truth-In-Lending Act consumer credit advertising provisions,

as incorporated in the Iowa Consumer Credit Code, and the Iowa Consumer Fraud Act. Defendant Timothy S. Markel acknowledged receipt of this letter, with a reply letter dated December 12, 1986, however, Defendant Markel did not sign and return to Plaintiff a proposed agreement that Defendant acknowledge the violations and promise to correct future advertisements. A copy of the November letters and Defendant's reply are attached to this Petition as Exhibits A and B.

#### IV.

15. Defendants in their Omaha World Herald advertisements have violated Iowa Code Section 714.16(2)(a) (1987) as amended, by using deception, unfair practices, or misrepresentation or having concealed, suppressed, or omitted material facts with intent that others rely upon such concealment, suppression, or omission in connection with the advertisement for sale of motor vehicles including, but not limited to, the following specifics:

- (a) On July 11, 1987, the Defendants violated Iowa Code § 714.16(2)(a) in their advertisement in the Omaha World Herald by advertising "1986 Lincoln town Cars" at "One Low Price" of \$14,982, but omitting a disclosure that the vehicles were not new vehicles. (See Exhibit 1).
- (b) On July 3 and 5, 1987, the Defendants violated Iowa Code § 714.16(2)(a) by stating in their July 3, 1987 advertisement in the Omaha World Herald that their "4th of July Blowout" sale would last for "2 days only," and then extending the sale another two days in their July 5, 1987 advertisement in the Omaha World Herald. (See Exhibits 2 and 3).

(c) On May 2, 23 and 30, 1987 and June 20 and 21, 1987, the Defendants violated Iowa Code § 714.16(2)(a) by stating in their advertisements in the Omaha World Herald that buyers would "Save Over \$3,000" on a 1987 Ford F-150 Truck at the advertised price of \$9,990. Defendants did not provide the basis for this savings in their advertisements. (*See Exhibits 4, 5, 6, and 7*).

(d) On June 20 and 24, 1987, the Defendants violated Iowa Code § 714.16(2)(a) by stating in their advertisements in the Omaha World Herald that buyers would save either \$1,500 or \$2,000 on specific 1984 and 1985 vehicles under prices the buyer "will pay this fall" without providing a basis for buyers to ascertain what the Defendants meant when they stated, "under prices you will pay this fall." (*See Exhibits 8 and 9*).

(e) On July 11 and 12, 1987, Defendants violated Iowa Code § 714.16(2)(a) by stating in their advertisements in the Omaha World Herald that buyers would save either \$2,500 or \$3,500 on the advertised vehicles, but did not provide a basis for this savings in their advertisements. (*See Exhibits 10, 11, and 12*).

(f) On May 9 and 23, 1987, Defendants' advertisements in the Omaha World Herald violated Iowa Code § 714.16(2)(a) by offering a "Five Star Vacation Week-End" on "Every '87 Taurus & F-150 Truck in Stock." Defendants' advertisements served to bait consumers into purchasing these vehicles from Defendants by failing to disclose that the cost of the vacations were included in the sale prices of the vehicles, based upon Plaintiff's information and belief. (*See Exhibits 27 and 28*).

(g) On May 30, 1987 and June 6, 20 and 27, 1987, Defendants' advertisements in the Omaha World Herald violated Iowa Code § 714.16(2)(a)

by stating that a sale of 1986 Thunderbirds would last for two days only in its May 30 and June 6, 1987 advertisements. (See Exhibits 16, 17, 18 and 19).

16. Defendants have violated Iowa Code Section 537.3209, 12 C.F.R. § 226.24, and 12 C.F.R. § 213.5 by making misleading representations of credit terms and by omitting mandatory terms of credit in their advertisements for sale or lease of motor vehicles including, but not limited to, the following specifics:

- (a) On May 2, 9, 10, 16 and 30, 1987 and June 6, 20 and 27, 1987, Defendants, in their advertisements in the Omaha World Herald, stated the amount of down payment on advertised vehicles, but did not state the terms of repayment and the annual percentage rate or the abbreviation A.P.R. in violation of 12 C.F.R. § 226.24(c)(2)(ii)(iii). (See Exhibits 13-19).
- (b) On January 17, 29 and 31, 1987, March 19, 21 and 22, 1987, April 4, 1987, and July 12, 1987, Defendants, in their advertisements in the Omaha World Herald, specified the periods of repayment for advertised vehicles, but failed to disclose the amount or percentage of downpayment and the terms of repayment in violation of 12 C.F.R. § 226.24(c)(2)(i)(ii). (See Exhibits 20-25).
- (c) On February 5, 1987 and May 9 and 23, 1987, Defendants, in their advertisements in the Omaha World Herald, violated the requirements of 12 C.F.R. §213.5(c)(2). On February 5, 1987, Defendants advertised a 1987 Ford Tempo for lease and stated the amount of monthly payment, but failed to include the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, or that no such payments

are required. On May 9, 1987, Defendants advertised autos and trucks for lease with "No Money Down," but stated in small type that the first month's payment and a security deposit were due on delivery. On May 23, 1987, Defendants advertised Ford Tempos and Taurus for lease but failed to include the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, or that no such payments were required. (See Exhibits 26, 27, and 28).

(d) On January 17, 18 and 31, 1987 February 5, 1987, March 17, 1987, May 9 and 23, 1987, and June 13, 1987, Defendants violated 12 C.F.R. § 213.5(c)(3) in their advertisements in the Omaha World Herald. Defendants advertised the amount of monthly lease payments, but failed to include the total of payments due under the leases. (See Exhibits 29, 26, 27, 28, and 30).

(e) On January 17, 18 and 31, 1987, February 5, 1987, March 14, 1987, May 9 and 23, 1987, and June 13, 1987, Defendants violated 12 C.F.R. § 213.5(c)(4) in their advertisements in the Omaha World Herald by advertising the amount of monthly lease payments, but failing to include a statement of whether or not the leasee has the option to purchase the leased property and at what price and time. (See Exhibits 29, 26, 31, 27, 28, and 30).

(f) On January 17, 18 and 31, 1987, February 5, 1987, March 14, 1987, May 9 and 23, 1987 and June 13, 1987, Defendants violated 12 C.F.R. § 213.5(c)(5) in their advertisements in the Omaha World Herald by advertising the amount of monthly lease payments, but failing to include a statement of the amount or method of determining the amount of any liabilities the leases would impose upon the lessees [sic] at the

end of the lease terms and a statement that the leasee shall be liable for the difference, if any, between the estimated value of the leased property and its realized value at the end of the lease term, if the leasee has such liability. (*See Exhibits 29, 26, 31, 27, 28 and 30.*)

(g) On January 17, 18 and 31, 1987, Defendants violated 12 C.F.R. § 213.5(c)(1), in their advertisements in the Omaha World Herald by stating the amount of payment, but did not clearly and conspicuously indicate in the advertisement that the vehicle was offered under a lease, and in fact misrepresented the transaction as a "Specially Reduced Monthly Payment Plan." (*See Exhibit 29.*)

(h) On July 5, 1987, Defendants in their advertisement in the Omaha World Herald, stated that advertised vehicles would be sold at 3.9% financing. However, Defendants failed to state that this rate was an annual percentage rate in violation of 12 C.F.R. 226.24(b). (*See Exhibit 3.*)

17. The representations set forth in paragraph 16 above are deceptive and misleading, and therefore also violate the Iowa Consumer Fraud Act, Iowa Code § 714.16(2)(a) (1987) as amended.

## V. PRAYER FOR RELIEF

18. It is in the public interest that temporary and permanent injunctive relief be promptly issued to protect the public of the State of Iowa from any further losses from Defendants' illegal conduct.

19. This petition for injunctive relief has not been presented to, or denied, by any other judge of the district court.

20. The State of Iowa is exempt from furnishing bond by the provisions of Iowa R. Civ. P. 9.

WHEREFORE, the Plaintiff prays for relief against the Defendants as follows:

21. After notice and opportunity for hearing, the Court should issue a temporary injunction restraining Defendants from:

(a) advertising, offering for sale or lease, attempting to sell or lease or selling or leasing any goods in violation of 12 C.F.R. § 226.24 and 12 C.F.R. § 213.5 as incorporated in Iowa Code chapter 537, and

(b) advertising motor vehicles through the use of any deception, unfair practices or misrepresentations and specifically enjoining Defendants from engaging in practices in violation of the laws of the State of Iowa, and federal law as incorporated, as set forth in this Petition.

22. The Court should permanently enjoin Defendants from:

(a) advertising, offering for sale or lease, attempting to sell or lease or selling or leasing any goods in violation of 12 C.F.R. § 226.24 and 12 C.F.R. § 213.5 as incorporated in Iowa Code chapter 537, and

(b) advertising motor vehicles through the use of any deception, unfair practices or misrepresentations and specifically enjoining Defendants from engaging in practices in violation of the laws of the State of Iowa, and federal law as incorporated, as set forth in this Petition.

23. Order Defendants to pay restitution to Iowans of any money that was acquired by means of any practices referred to above in violation of the Iowa Consumer Fraud Act, Iowa Code § 714.16, as amended.

24. Order Defendants to pay a civil penalty pursuant to Iowa Code § 537.6113(2) (1987) and a civil penalty pursuant to Iowa Code § 714.16(7), as amended.

25. Order Defendants to pay the state its costs pursuant to Iowa Code §§ 714.16(10), as amended, and 537.6106(1) (1987).

26. Order Defendants to pay all court costs.

27. Grant such further relief as the Court may deem just and equitable.

Respectfully submitted,  
THOMAS J. MILLER  
Attorney General of Iowa

RICHARD L. CLELAND  
Assistant Attorney General

By: /s/ William L. Brauch  
WILLIAM L. BRUACH  
Assistant Attorney General  
ATTORNEYS FOR THE  
PLAINTIFF  
Consumer Protection Division  
1300 East Walnut,  
Hoover Bldg.  
Des Moines, IA 50319  
Phone: (515) 281-5926

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**APPENDIX J**

**IN THE IOWA DISTRICT COURT FOR**

**POTTAWATTAMIE COUNTY**

---

THE STATE OF IOWA ex rel.	)	
THOMAS J. MILLER,	)	
ATTORNEY GENERAL OF IOWA,	)	
Plaintiff,	)	
v.	)	
STAN OLSEN PONTIAC, INC.	)	EQUITY NO.
d/b/a OLSEN AUTO WORLD and	)	58537
OLSEN FAMILY DISCOUNT	)	
CENTER;	)	PETITION
METROPOLITAN LINCOLN-	)	(Filed Sept. 4,
MERCURY, INC. d/b/a Olsen	)	1987)
Auto World, Olsen Family	)	
Discount Center, and Metro	)	
Motors,	)	
OLSEN DODGE, INC. d/b/a	)	
Olsen Family Discount Center and	)	
Olsen Auto World,	)	
STANLEY OLSEN in his corporate	)	
capacity as President of	)	
Metropolitan Lincoln-Mercury, Inc.,	)	
and Stan Olsen Pontiac, Inc., and	)	
RONALD OLSEN in his corporate	)	
capacity as President of Olsen	)	
Dodge, Inc.,	)	
Defendants.	)	

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COMES NOW the plaintiff, the State of Iowa, by  
Thomas J. Miller, Attorney General of the State of Iowa,

and William L. Brauch, Assistant Attorney General, and for its cause of action states:

I.

1. The plaintiff, the State of Iowa ex rel. Thomas J. Miller, Attorney General of Iowa, is empowered pursuant to the Iowa Consumer Fraud Act, Iowa Code § 714.16, H.F. 416, 72 G.A., 1st Sess. (Iowa 1987) (hereinafter referred to as Iowa Code § 714.16 (1987) as amended) and the Iowa Consumer Credit Code, Iowa Code §§ 537.6104(2), 537.6110, 537.6112, and 537.6113 (1987) to initiate this action seeking injunctive relief, a civil penalty, restitution and recovery of costs for the use of the State, including court costs.

2. The Attorney General is the Administrator of the Iowa Consumer Credit Code, Iowa code § 537.6103 (1987), and in this capacity may enforce the federal Truth-In-Lending Act 15 U.S.C. § 1601, et seq. (hereinafter referred to as the federal Truth-In-Lending Act) to the fullest extent of the law. Iowa Code § 537.6104(2) (1987).

3. Thomas J. Miller is the duly elected, qualified and acting Attorney General of the State of Iowa.

4. Defendant Stan Olsen Pontiac, Inc. d/b/a/ Olsen Auto World and Olsen Family Discount Center is an Omaha corporation whose principal place of business is 808 North 102nd, Omaha, Nebraska 68114.

5. Defendant Metropolitan Lincoln-Mercury, Inc. d/b/a/ Olsen auto world, Olsen Family Discount Center,

and Metro Motors is an Omaha corporation whose principal place of business is 908 North 102nd, Omaha, Nebraska 68114.

6. Defendant Olsen Dodge, Inc. d/b/a Olsen Family Discount Center and Olsen Auto World, is an Omaha corporation whose principal place of business is 1010 North 102nd, Omaha, Nebraska 68114.

7. Defendant Stanley Olsen is the President of Metropolitan Lincoln-Mercury, Inc. and of Stan Olsen Pontiac, Inc.

8. Defendant Ronald Olsen is the President of Olsen Dodge, Inc.

9. The term defendants shall refer to Stan Olsen Pontiac, Inc.; Metropolitan Lincoln-Mercury d/b/a Metro Motors; Olsen Dodge, Inc. (all d/b/a Olsen Auto World and Olsen Family Discount Center); Ronald Olsen; and Stanley Olsen unless otherwise specifically designated.

## II.

10. The Iowa District Court has jurisdiction of this action pursuant to Iowa Code §§ 537.1201(1)(c), 537.1203, 537.6104(2) (1987), and § 714.16(7) as amended.

11. Defendants have offered motor vehicles for sale or lease to Iowans through advertisements in the Iowa Edition of the Omaha World-Herald which is a newspaper sold, distributed, and delivered to Iowans in Iowa.

12. On information and belief, Iowans have purchased or leased motor vehicles for their use in Iowa from the defendants based on these advertisements.

13. Defendants' advertisements are governed by the Iowa Consumer Credit Code, Iowa Code §§ 537.3209, 537.6104(2) (1987); the federal Truth-In-Lending Act, 15 U.S.C. §§ 1662, 1664 and 1667c (1987), and its implementing regulations 12 C.F.R. § 226.24 (1987); 12 C.F.R. § 215.5 (1987); and the Iowa Consumer Fraud Act, Iowa Code § 714.16(2)(a) (1987) as amended.

14. Iowa Code § 537.3209 (1987), the Iowa Consumer Credit Code provides as follows:

A seller, lessor, or lender shall not advertise, display, publish, distribute, utter, or broadcast, or cause to be advertised, printed, displayed, published, distributed, uttered, or broadcast in any manner, any false, misleading, or deceptive statement or representation with regard to the rates, terms or conditions of credit with respect to a consumer credit transaction.

15. Incorporated in the Iowa Consumer Credit Code, the federal Truth-In-Lending Act, and regulations promulgated thereunder, specifically 12 C.F.R. § 226.24(a)-(c), and Comment 1, § 226.24 (1987) provides, in general, that all advertisements of credit terms are subject to a "clear and conspicuous" standard. In particular, § 226.24(a)-(c) provides:

(a) If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

(b) If an advertisement states a rate of finance charge, it shall state the rate as an "annual percentage rate," using that term. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. The advertisement shall not state any other rate,

except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

(c) If an advertisement states the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, the advertisement must also state the following terms:

- i. The amount or percentage of the downpayment.
- ii. The terms of repayment.
- iii. The "annual percentage rate," using that term, and, if the rate may be increased after consummation, that fact.

and 12 C.F.R. § 213.5(a) and (c) (1987) provide:

(a) No advertisement to aid, promote or assist directly or indirectly any consumer lease may state that a specific lease of any property at specific amounts or terms is available unless the lessor usually and customarily leases or will lease such property at those amounts or terms.

\* \* \*

(c) If an advertisement for a consumer lease states the amount of any payment, the number of required payments, or that any or no downpayment is required at consummation of the lease, the advertisement must also clearly and conspicuously state:

- i. That the transaction advertised is a lease.
- ii. The total amount of any payment such as a security deposit required at the consummation of the lease or that no such payment is required.

- iii. A payment schedule.
- iv. A statement of whether the customer has the option to purchase the leased property.
- v. A statement about the amount of any liability the lease imposes upon the customer at the end of the term.

16. Iowa Code Section 714.16(2)(a) (1987) as amended provides as follows:

The act, use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression, or omission of a material fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise, whether or not a person has in fact been misled, deceived, or damaged, is an unlawful practice.

### III.

17. Defendants Stan Olsen's Metro Motors and Ron Olsen Dodge were advised by the plaintiff by certified letter on or about November 26, 1986, that certain of their advertisements violated the federal Truth-In-Lending Act consumer advertising provisions, as incorporated in the Iowa Consumer Credit Code and/or the Iowa Consumer Fraud Act. Defendants Ronald Olsen and Stanley Olsen each acknowledged receipt of these letters on December 11, 1986 and December 12, 1986, respectively. However, neither defendant Ronald Olsen, nor defendant Stanley Olsen signed and returned to plaintiff proposed agreements that defendants acknowledge the violations and promise to correct future advertisements. Copies of the

November letters and defendant Ronald Olsen's and defendant Stanley Olsen's replies are attached to this Petition as Exhibits A, B, C and D.

IV.

18. Defendants in their Omaha World-Herald (Iowa Edition) advertisements have violated Iowa Code Section 714.16(2)(a) (1987) as amended, by using deception, unfair practices, or misrepresentation or having concealed, suppressed, or omitted material facts with intent that others rely upon such concealment, suppression, or omission in connection with the advertisement for sale of motor vehicles including, but not limited to, the following specifics:

- a) On June 13, 14, 18, 20 and 27, 1987 and July 2 and 5, 1987, defendant Olsen Dodge, Inc. violated Iowa Code § 714.16(2)(a) in its motor vehicle advertisements in the Omaha World Herald by using the phrase "UNDER INVOICE" without also clearly and conspicuously stating that the invoice price does not necessarily reflect the actual cost of the vehicle to the dealer. (*See Exhibits 1-7*).
- b) On June 13 and 14, 1987 and July 2, 5, 9, 11 and 12, 1987, defendants violated Iowa Code § 714.16(2)(a) in their advertisements in the Omaha World Herald by not giving reasonable bases for the advertised discounts. (*See Exhibits 1, 6, 7, 8, 9, 10 and 11*).
- c) On July 2 and 9, 1987, defendants violated Iowa Code § 714.16(2)(a) in their advertisements in the Omaha World Herald by advertising a three day sale on July 2 and then advertising essentially the same "sale" on July 9, 1987. (*See Exhibits 6 and 12*).

- d) On August 13, 1987, defendant Olsen Dodge, Inc. violated Iowa Code § 714.16(2)(a) in its advertisement in the Omaha World Herald by stating that "\$99 DELIVERS" on seven different types of vehicles listed, but then, immediately below that statement advertised some of the same types of vehicles, listing monthly payment amounts. This advertisement was misleading in that the "\$99 DELIVERS" offer was not available for the autos listed in the advertisement with monthly payment amounts disclosed.

Furthermore, defendant Olsen Dodge failed to reveal in a conspicuous manner that the vehicles advertised with monthly payment amounts were offered under a lease. Thus, the advertisement was misleading and violated Iowa Code § 714.16(2)(a). (*See Exhibit 33*).

19. Defendants have violated Iowa Code Section 537.3209, C.F.R. § 226.24, and 12 C.F.R. § 213.5 by making misleading representations and by omitting mandatory terms of credit in their advertisements for sale or lease of motor vehicles including, but not limited to, the following specifics:

- a) On May 23, 25, 28, 30 and 31, 1987 and June 4 and 6, 1987, defendants' advertisements in the Omaha World Herald stated the amounts of downpayment for advertised vehicles, but omitted to include complete terms of repayment or the annual percentage rate in violation of 12 C.F.R. § 226.24(c)(2)(ii) and (iii). (*See Exhibit 13*).
- b) On February 7, 1987, defendant Metropolitan Lincoln-Mercury, Inc., in their advertisement in the Omaha World Herald, stated

the amount of the monthly payments for a 1987 Topaz and a 1987 Lynx but did not include the amount of the downpayment in violation of 12 C.F.R. § 226.24(c)(2)(ii). (See Exhibit 14).

- c) On March 15, 19, 23, 26 and 28, 1987, April 30, 1987, May 2, 3, 9, 10, 16, 17, 23, 24, 30 and 31, 1987, and June 6, 7 and 13, 1987, defendants stated the amounts of monthly payments for vehicles in their advertisements in the Omaha World Herald, but did not clearly and conspicuously indicate that the vehicles were offered under a lease in violation of 12 C.F.R. § 213.5(c)(1). (See Exhibit 15-29).
- d) On May 2, 3, 9, 10, 16, 17, 23, 24, 30 and 31, 1987, and June 6, 7 and 13, 1987, defendants stated the amounts of monthly payments for advertised lease vehicles in their Omaha World Herald advertisements, but did not disclose the total of such payments under the lease in violation of 12 C.F.R. § 213.5(c)(3). (See Exhibits 21-29).
- e) On January 17, 1987, March 15, 19, 23, 26 and 28, 1987, April 30, 1987, May 2, 3, 9, 10, 16, 17, 23, 24, 30 and 31, 1987, and June 6, 7 and 15, 1987, defendants stated the amounts of monthly payments for advertised lease vehicles in their Omaha World Herald advertisements, but did not include a statement of whether the lessee [sic] has the option to purchase the leased auto, and at what price and time in violation of 12 C.F.R. § 213.5(c)(4). (See Exhibits 30, 15-29).
- f) On January 17, 31, 1987, February 1, 7 and 8, 1987, May 2, 3, 9, 10, 16, 17, 23, 24, 30 and 31, 1987, and June 6, 7 and 13, 1987, defendants stated the amounts of monthly payments for advertised lease vehicles in their

Omaha World Herald advertisements, but did not include a statement of the amount/method of determining the amount of any liability the lease imposes upon the lessee in violation of 12 C.F.R. § 213.5(c)(5). (See Exhibits 30, 31, 21-29).

- g) On or about July 22, 1987, sales agents for defendants Olsen Dodge, Inc. gave potential buyer a brochure which stated the number of payments required for certain annual percentage rates but did not include the amounts of downpayments or the terms of repayment in violation of 12 C.F.R. § 226.24(c)(2)(i) and (ii). (See Exhibit 32).
  - h) On August 13, 1987, defendant Olsen Dodge, Inc. violated 12 C.F.R. § 213.5(c)(1) in its advertisement in the Omaha World Herald by omitting to clearly and conspicuously disclose that the advertised vehicles were offered under a lease. (See Exhibit 33).
20. The representations set forth in paragraph 19 above deceptive and misleading, and therefore also violate the Iowa Consumer Fraud Act, Iowa Code § 714.16(2)(a) (1987) as amended.

#### V. PRAYER FOR RELIEF

21. It is in the public interest that temporary and permanent injunctive relief be promptly issued to protect the people of the State of Iowa from any further losses from defendants illegal conduct.

22. This petition for injunctive relief has not been presented to, or denied, by any other judge of the district court.

23. The State of Iowa is exempt from furnishing bond by the provisions of Iowa R. Civ. P. 9.

WHEREFORE, the Plaintiff prays for relief against the defendants as follows:

24. After notice and opportunity for hearing, the Court should issue a temporary injunction restraining defendants from:

(a) advertising, offering for sale or lease, attempting to sell or lease or selling or leasing any goods in violation of 12 C.F.R. § 226.24 and 12 C.F.R. § 213.5 as incorporated in Iowa Code chapter 537, and

(b) advertising motor vehicles through the use of any deception, unfair practices or misrepresentations and specifically enjoining defendants from engaging in practices in violation of the laws of the State of Iowa, and federal law as incorporated, as set forth in this Petition.

25. The Court should permanently enjoin defendants from:

(a) advertising, offering for sale or lease, attempting to sell or lease or selling or leasing any goods in violation of 12 C.F.R. § 226.24 and 12 C.F.R. § 213.5 as incorporated in Iowa Code chapter 537, and

(b) advertising motor vehicles through the use of any deception, unfair practices or misrepresentations and specifically enjoining defendants from engaging in practices in violation of the laws of the State of Iowa, and federal law as incorporated, as set forth in this Petition.

26. Order defendants to pay restitution to Iowans of any money that was acquired by means of any practices

referred to above in violation of the Iowa Consumer Fraud Act, Iowa Code § 714.16, as amended.

27. Order defendants to pay a civil penalty pursuant to Iowa Code § 537.6113(2) (1987) and a civil penalty pursuant to Iowa Code § 714.16(7), as amended.

28. Order defendants to pay the state its costs pursuant to Iowa code §§ 714.16(10), as amended, and 537.6106(1) (1987).

29. Order defendants to pay all court costs.

30. Grant such further relief as the Court may deem just and equitable.

Respectfully submitted,

THOMAS J. MILLER  
Attorney General of Iowa

RICHARD L. CLELAND  
Assistant Attorney General

/s/ William L. Brauch  
WILLIAM L. BRAUCH  
Assistant Attorney General

ATTORNEYS FOR THE  
PLAINTIFF  
Consumer Protection Division  
1300 East Walnut,  
Hoover Bldg.  
Des Moines, IA 50319  
Phone: (515) 281-5926

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## APPENDIX K

## AFFIDAVIT

STATE OF IOWA              )  
                                )  
COUNTY OF POLK              ) ss:  
                                )

I, Nancy Dudak, am a Consumer Protection Investigator for the plaintiff State of Iowa. Being first duly sworn, under oath I do state and depose that the following is true to the best of my knowledge and belief.

On December 14, 1987, I spoke by phone with Tom Kildee of the *Omaha World Herald*, telephone 402-444-1000, and received the following information:

1. The City of Council Bluffs has 5,700 Sunday *Omaha World Herald* and 3,700 daily *Omaha World Herald* home delivered subscriptions. This does not include all of Pottawattamie County, only the City of Council Bluffs, Iowa.
2. There are 133,000 Sunday and 106,00 [sic] daily subscriptions for all Metro home deliveries. (Metro refers to Douglas, Sarpy and Pottawattamie counties).
3. There are 164,000 Sunday and 135,000 daily all Metro papers circulated.

On December 14, 1987 I reviewed an edition of the Sunday *Omaha World Herald* (Iowa Edition) and I found 10 pages of automobile advertisements. On December 14, 1987, I spoke by phone with Ed McGrath of the *Council Bluffs Non Pariel*, telephone 712-328-7811, and found that they deliver 13,263 daily home subscriptions and 15,045

Sunday home subscriptions. An average Sunday newspaper contains 7½ pages of classified ads and less than one page of those are automobile ads, according to Mr. McGrath.

On December 15, 1987, I spoke with a woman from the Council Bluffs Chamber of Commerce, telephone 712-325-1000, and was told that there are approximately 21,060 households in the city of Council Bluffs.

I have also reviewed the May 1987/1988 U.S. West Direct Yellow Pages Directory for Council Bluffs, Iowa, and found that of the 27 new car automobile dealer listings in large block advertisements and in single lines, 14 are located in Nebraska and 13 are located in Iowa. All defendants are included in the group of single line listings. In addition, Baxter Chrysler-Plymouth and Olsen's Auto World have large block advertisements in the U.S. West Direct Yellow Pages.

From July, 1987 until August, 1988, one of my job duties was to monitor automobile advertising in the daily and Sunday *Omaha World Herald* for compliance with Iowa Code Section 714.16 (1987) and Iowa Code Chapter 537 (1987). During this monitoring I observed almost daily advertisements by: John Kraft Chevrolet-Isuzu of Omaha, Nebraska; Markel Ford of Omaha, Nebraska; Olsen Auto World of Omaha, Nebraska; Olsen Family Discount of Omaha, Nebraska; Metro Motors of Omaha, Nebraska; Dean Rawson Nissan of Omaha, Nebraska; and Baxter Chrysler-Plymouth of Omaha, Nebraska.

Further, affiant [sic] sayeth not.

/s/ Nancy Dudak  
NANCY DUDAK

123a

Subscribed and sworn to before me this 30th day of January, 1989.

/s/ Melissa J. Miller  
NOTARY PUBLIC

MELISSA J. MILLER  
MY COMMISSION EXPIRES  
October 16, 1989

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**APPENDIX L****§ 1640. Civil liability****individual or class action for damages; amount of award; factors determining amount of award**

(a) Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this part, including any requirement under section 1635 of this title, or part D or E of this subchapter with respect to any person is liable to such person in an amount equal to the sum of-

(1) any actual damage sustained by such person as a result of the failure;

(2)(A)(i) in the case of an individual action twice the amount of any finance charge in connection with the transaction, or (ii) in the case of an individual action relating to a consumer lease under part E of this subchapter, 25 per centum of the total amount of monthly payments under the lease, except that the liability under this subparagraph shall not be less than \$100 nor greater than \$1,000; or

(B) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same creditor shall not be more than the lesser of \$500,000 or 1 per centum of the net worth of the creditor; and

(3) in the case of any successful action to enforce the foregoing liability or in any action in which a person is determined to have a right of rescission under section 1635 of this title, the costs of the action, together with a reasonable attorney's fee as determined by the court.

In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional. In connection with the disclosures referred to in section 1637 of this title, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 1635, section 1637(a), or of paragraph (4), (5), (6), (7), (8), (9), or (10) of section 1637(b) of this title or for failing to comply with disclosure requirements under State law for any term or item which the Board has determined to be substantially the same in meaning under section 1610(a)(2) of this title as any of the terms or items referred to in section 1637(a) of this title or any of those paragraphs of section 1637(b) of this title. In connection with the disclosures referred to in section 1638 of this title, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 1635 of this title or of paragraph (2) (insofar as it requires a disclosure of the "amount financed"), (3), (4), (5), (6), or (9) of section 1638 (a) of this title, or for failing to comply with disclosure requirements under State law for any term which the Board has determined to be substantially the same in meaning under section 1610(a)(2) of this title as any of the terms referred to in any of those paragraphs of section 1638(a) of this title. With respect to any failure to make disclosures required under this part or part D or E of this

subchapter, liability shall be imposed only upon the creditor required to make disclosure, except as provided in section 1641 of this title.

#### **Correction of errors**

(b) A creditor or assignee has no liability under this section or section 1607 of this title or section 1611 of this title for any failure to comply with any requirement imposed under this part or part E of this subchapter, if within sixty days after discovering an error, whether pursuant to final written examination report or notice issued under section 1607(e)(1) of this title or through the creditor's or assignee's own procedures, and prior to the institution of an action under this section or the receipt of written notice of the error from the obligor, the creditor or assignee notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay an amount in excess of the charge actually disclosed, or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.

#### **Unintentional violations; bona fide errors**

(c) A creditor or assignee may not be held liable in any action brought under this section or section 1635 of this title for a violation of this subchapter if the creditor or assignee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples of a bona fide error include, but are not limited

to, clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a person's obligations under this subchapter is not a bona fide error.

**Liability in transaction or lease involving multiple obligors**

(d) When there are multiple obligors in a consumer credit transaction or consumer lease, there shall be no more than one recovery of damages under subsection (a)(2) of this section for a violation of this subchapter.

**Jurisdiction of courts; limitations on actions**

(e) Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation. This subsection does not bar a person from asserting a violation of this subchapter in an action to collect the debt which was brought more than one year from the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action, except as otherwise provided by State law.

**Good faith compliance with rule, regulation,  
or interpretation of Board or with  
interpretation or approval of duly authorized  
official or employee of Federal Reserve System**

(f) No provision of this section, section 1607(b), section 1607(c), section 1607(e), or section 1611 of this title imposing any liability shall apply to any act done or

omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

#### **Recovery for multiple failures to disclose**

(g) The multiple failure to disclose to any person any information required under this part or part D or E of this subchapter to be disclosed in connection with a single account under an open end consumer credit plan, other single consumer credit sale, consumer loan, consumer lease, or other extension of consumer credit, shall entitle the person to a single recovery under this section but continued failure to disclose after a recovery has been granted shall give rise to rights to additional recoveries. This subsection does not bar any remedy permitted by section 1635 of this title.

#### **Offset from amount owed to creditor or assignee; rights of defaulting consumer**

(h) A person may not take any action to offset any amount for which a creditor or assignee is potentially liable to such person under subsection (a) (2) of this section against any amount owed by such person, unless the amount of the creditor's or assignee's liability under

this subchapter has been determined by judgment of a court of competent jurisdiction in an action of which such person was a party. This subsection does not bar a consumer then in default on the obligation from asserting a violation of this subchapter as an original action, or as a defense or counterclaim to an action to collect amounts owned by the consumer brought by a person liable under this subchapter.

(Pub.L. 90-321, Title I, § 130, May 29, 1968, 82 Stat. 157; Pub.L. 93-495, Title IV, §§ 406, 407, 408(a)-(d), Oct. 28, 1974, 88 Stat. 1518; Pub.L. 94-222, § 3(b), Feb. 27, 1976, 90 Stat. 197; Pub.L. 94-240, § 4, Mar. 23, 1976, 90 Stat. 260; Pub.L. 96-221, Title VI, § 615, Mar. 31, 1980, 94 Stat. 180.)

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